

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Adoption of Chapter 141  
Hawaii Administrative Rules  
June 1, 1999

SUMMARY

Chapter 141 of Title 3, Hawaii Administrative Rules,  
entitled "General Provisions", is adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 141

GENERAL PROVISIONS

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SUBCHAPTER 1

PURPOSE AND SCOPE

§3-141-101 Purpose. The purpose of these rules is to promote economy, efficiency, and effectiveness in the procurement of health and human services for the state, by:

- (1) Simplifying, clarifying, and modernizing the law governing procurement;
- (2) Encouraging the continued development of procurement policies and practices to accommodate changing needs and circumstances;
- (3) Making the procurement laws and practices as consistent as practicable;
- (4) Ensuring the fair and equitable treatment of all providers who deal with the procurement system of the state;
- (5) Providing increased economy in procurement activities and maximizing to the fullest extent practicable the purchasing value of public funds;

- (6) Fostering effective, broad-based competition within the free enterprise system;
- (7) Providing safeguards for the maintenance of a procurement system that has quality and integrity; and
- (8) Increasing public confidence in the procedures followed in public procurement.  
[Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-101, et seq.)

§3-141-102 Scope. The provisions of this chapter are of a general character, and shall apply to all procedures, matters, and issues arising in connection with chapter 103F, HRS, or these rules.  
[Eff JUN 19 1999] (Auth: HRS § 103F-106)  
(Imp: HRS § 103F-101, et seq.)

§3-141-103 Construction. These rules shall be liberally interpreted to accomplish the purposes stated in section 3-141-101. [Eff JUN 19 1999]  
(Auth: HRS § 103F-106) (Imp: HRS § 103F-106)

## SUBCHAPTER 2

### GENERAL GROUNDS FOR REJECTION

§3-141-201 Rejection for failure to cooperate or deal in good faith. (a) A purchasing agency may reject any proposal, statement of qualifications, or quotation submitted to it if, in light of all the circumstances, the purchasing agency deems that the applicant has failed to cooperate with the purchasing agency, or to deal with the purchasing agency in good faith.

(b) Actions constituting a failure to cooperate or deal in good faith. Actions constituting a failure

to cooperate or deal in good faith include but are not limited to:

- (1) The knowing withholding, omission, or misrepresentation of information that is material to an applicant's proposal; or
- (2) The refusal to provide any information reasonably requested or required by the purchasing agency.

(c) Procedure for rejection. Any rejection made under this section shall be made in writing, and shall include a concise statement of the actions justifying the rejection. [Eff JUN 19 1999] (Auth: HRS §§ 103F-106, 103F-407) (Imp: HRS § 103F-407)

§3-141-202 Rejection for inadequate accounting system. (a) A purchasing agency may reject any proposal or quotation submitted to it if, in light of all the circumstances, the purchasing agency deems that the applicant's accounting system is inadequate for keeping the procurement and financial records required by the purchasing agency or the state procurement office.

(b) Requirements for accounting systems. The requirements for an adequate accounting system may include, but are not limited to:

- (1) The ability to keep accurately all the procurement and financial records required by law, the purchasing agency, or the state procurement office;
- (2) The ability to permit timely development of all necessary cost data in the form required by the specific contract type contemplated; or
- (3) Compliance with generally accepted accounting principles.

(c) Procedure for rejection. Any rejection made under this section shall be made in writing, and shall include a concise statement of the reasons justifying the rejection. [Eff JUN 19 1999] (Auth: HRS §§ 103F-106, 103F-407) (Imp: HRS § 103F-407)

### SUBCHAPTER 3

#### RECORD-KEEPING

##### §3-141-301 Retention of procurement records.

All procurement records shall be retained and disposed of in accordance with chapter 94, HRS, and retention guidelines and schedules for records approved by the comptroller. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-301)

##### §3-141-302 Retention of books and records.

Any provider or sub-provider who receives a contract or contract amendment or modification for which programmatic, fiscal or expenditure data are required shall maintain appropriate programmatic and financial records for three years from the date of final payment under contract. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-301)

##### §3-141-303 Confidentiality.

Except as provided in chapter 3-143, procurement documents shall be available for public review in accordance with existing law governing information practices. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-401, et. seq.)

### SUBCHAPTER 4

#### GENERAL OPERATING PROCEDURES

##### §3-141-401 Lists of providers.

(a) In order to facilitate the efficiency of the health and human services procurement system, purchasing agencies may compile lists of providers that may be interested in competing for various types of contracts.

(b) No right to notice given. Inclusion on any list compiled under this section does not give a provider any right to notice of requests for proposals or other solicitations by a purchasing agency. Lists of providers are compiled solely for the convenience of purchasing agencies, and shall not be construed to confer any right or privilege on any provider included on such a list.

(c) Procedure for compilation. Lists of providers may be compiled based on any procedure reasonably calculated to include as many potential providers as practicable. Such procedures may include but are not limited to listing the providers that currently hold contracts with the purchasing agency, listing providers who have responded to the purchasing agency's recent requests for proposals, or other solicitation made by the purchasing agency.

(d) Updating lists. Purchasing agencies may update lists of providers compiled under this section as frequently as they deem necessary or advisable.

(e) Public inspection of lists. Any list of providers compiled under this section shall be available for public inspection at the purchasing agency or office of the procurement officer.

[Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-301)

§3-141-402 Cost principles. (a) In order to promote uniform purchasing practices among purchasing agencies that require health and human services, the administrator may, in conjunction with the purchasing agencies, establish cost principles for use in contracts for health and human services.

(b) Coordination with federal law. Nothing in this section shall be construed to create an exemption from any cost principle or pricing requirements arising under federal law. Purchasing agencies receiving federal funding shall comply with applicable federal cost principle and pricing requirements, unless the state cost principles are more restrictive,

in which case the purchasing agency shall comply with the state cost principles.

(c) Waiver for good cause. The head of a purchasing agency may, for good cause, waive compliance with any cost principles established under this section. Such waiver shall be made in writing by the head of the purchasing agency, and shall include an explanation of the circumstances that justify the waiver. The written waiver shall be placed in the contract file, and appropriate notice of the waiver shall be included in the request for proposals, statements of qualifications, or any other solicitation, as applicable. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS §§ 103F-105, 103F-301)

§3-141-403 No exemption from laws governing the treatment of persons with disabilities. Nothing in these rules or in chapter 103F, HRS, shall be construed as an exemption from the Americans with Disabilities Act (42 U.S.C. 12101, et seq.), the Rehabilitation Act (29 U.S.C. 701, et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1401, et seq.), or any other federal, state, or county law governing the treatment of persons with disabilities. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS §§ 103F-105, 103F-301)

§3-141-404 No exemption from anti-competitive practices. Nothing in these rules, or in chapter 103F, HRS, shall be construed as an exemption from federal, state, or county laws forbidding anti-competitive practices. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS §§ 103F-203, 103F-301, 103F-401-103F-406)

§3-141-405 Selection of procurement method. A particular planned purchase of health and human services may fall within the scope of multiple methods



of procurement established by chapter 103F, HRS. Whenever multiple methods of procurement apply to a single planned purchase, the head of the purchasing agency shall select the applicable method of procurement that is in the best interests of the state. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS §§ 103F-401 - 103F-406)

## SUBCHAPTER 5

### STATE PROCUREMENT OFFICE

§3-141-501 Waiver of compliance with administrative rules. The administrator may, for good cause, upon his or her own initiative or upon application by the head of a purchasing agency, waive a purchasing agency's compliance with these rules. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS §§ 103F-101, 103F-106)

§3-141-502 Availability of forms. Forms and instructions for submittal of proposals, statements of qualifications, or other requests for funding may be prescribed by the administrator. Purchasing agencies shall make available to applicants all necessary forms for each respective procurement method. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-301)

§3-141-503 Exemptions from procurement procedures. (a) In addition to the exemptions specifically enumerated in section 103F-101, HRS, the following are also exempted from chapter 103F, HRS:

- (1) Subawards and subgrants to organizations directed by the funding source;
- (2) Grants and subsidies as those terms are defined in chapter 42F, HRS;

- (3) Affiliation agreements with hospitals and other health care providers required for University of Hawaii clinical programs; and
- (4) Services of psychiatrists and psychologists in criminal and civil proceedings when required by court order or by the rules of court.

(b) Certain federally funded contracts.

Contracts for health and human services that are wholly or partly funded from federal sources shall be exempt from chapter 103F, HRS, when:

- (1) The source of the federal funds imposes conditions on the receipt of the federal funds that conflict with the procedures and requirements established by chapter 103F, HRS, and its implementing rules; or
- (2) The contract is to provide health and human services to implement a federal program that
  - (A) Identifies a target class of beneficiaries;
  - (B) Defines the requirements for a provider to be qualified to participate in the federal program; and
  - (C) Has the price of the provided health and human services dictated by federal law.

(c) Further exemptions by the chief procurement officers. Chief procurement officers may for good cause, upon their own initiative, or upon application by the head of a purchasing agency, exempt additional transactions. Before granting an exemption under this subsection, a chief procurement officer shall consult with the administrator. [Eff JUN 19 1999] (Auth: HRS § 103F-106) (Imp: HRS § 103F-101)

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Chapter 141, Hawaii Administrative Rules, on the Summary Page dated June 1, 1999, was adopted on June 1, 1999, following public hearings held on May 11, 12, 18, 19, 20, 1999 after public notice was given in the Hawaii State and County Public Notices on April 5, 1999.

The adoption of chapter 141 shall take effect ten days after filing with the Office of the Lieutenant Governor.

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Robert E. Oyama, Chairperson  
Procurement Policy Board

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Raymond H. Sato  
State Comptroller

APPROVED:

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Benjamin J. Cayetano  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

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Deputy Attorney General

JUN 09 1999  
Filed